STATE OF MICHIGAN

COURT OF APPEALS

MAE PROPERTIES, LLC, Plaintiff-Appellee,	UNPUBLISHED May 5, 2005
v	No. 253208 Eaton Circuit Court
HOME-OWNERS INSURANCE COMPANY, Defendant-Appellant.	LC No. 01-001005-CK

Before: Fort Hood, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's grant of summary disposition in favor of plaintiff pursuant to MCR 2.116(C)(10). Plaintiff brought suit seeking payment under an insurance contract after fire destroyed a building insured by defendant. The trial court granted summary disposition for plaintiff in the amount of $193,596.20, plus $79,029.73 in interest and $100 in costs for a total of $272,725.93. We affirm the order granting summary disposition, but remand for proceedings consistent with this opinion.

A fire destroyed a building insured by defendant. Plaintiff completed repairs to the building and in accordance with the insurance contract requested replacement cost value. Plaintiff and defendant could not agree on that value, in part because a relative-owned contractor performed some of the work on the building, and therefore, plaintiff did not have receipts to account for all of the performed work. Pursuant to the insurance contract and MCL 500.2833(m), the parties submitted the value of the claim for appraisal. Two of the three members of the appraisal panel reached a decision regarding the replacement cost value. However, defendant refused to pay plaintiff the full amount due based on the appraisal, arguing that plaintiff could not show that it had actually spent that amount in replacing the damaged building. We agree with plaintiff that once the claim was submitted for appraisal, defendant lost its right to determine the value of the loss based on the amount plaintiff could document that it spent.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Interpretation of the language of an insurance contract also is reviewed de novo. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998). An insurance agreement should be read as a whole and meaning given to all its terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489

NW2d 431 (1992). Courts determine matters of coverage under an insurance agreement, but the amount of loss as determined by the appraisers is conclusive. *Auto-Owners Ins Co v Kwaiser*, 190 Mich App 482, 487-488; 476 NW2d 467 (1991). The appraisal process is a substitute for judicial determination of the amount of loss in order to provide a simple and inexpensive process for the prompt adjustment and settlement of claims. *Id*. at 486. "Judicial review of the award is limited to instances of bad faith, fraud, misconduct, or manifest mistake." *Id*. When the parties cannot agree on coverage, the court must address the coverage issue *before* the damage to the property is submitted for appraisal. *Id*. at 487. To fulfill the function of prompt resolution and settlement of claims, the umpires and appraisers may "freely weigh speculative considerations affecting determinations of loss." *Union Lake Associates, Inc v Commerce and Industry Ins Co*, 89 Mich App 151, 160; 280 NW2d 469 (1979). There is a distinction between a factual possibility for the appraisers to consider as opposed to a legal conclusion addressing policy coverage. *Id*. at 159.

The contract at issue states that in determining the value of the covered property, defendant will not pay more than plaintiff actually spent in replacing the building, but it also states that if the parties do not agree on the amount of the loss, then the claim may be submitted to appraisal for a binding determination of the loss. To give meaning to both of these provisions, *Churchman, supra*, the contract must be read such that defendant was free to make its own determination as to the amount of plaintiff's loss on the basis of the amount plaintiff spent. However, when plaintiff disagreed with that figure and the parties submitted the claim for determination of the amount of loss by appraisal, defendant could no longer limit its payment based on what plaintiff had spent because the determination of loss was the province of the appraisers. Again, the statute providing for appraisal was intended as a simple, inexpensive, and prompt alternative to judicial determination. *Kwaiser, supra*. Requiring judicial determination of the amount spent for repairs *after* the appraisal panel has determined the replacement cost value would undermine the usefulness of the appraisal process. The appraisal panel's decision to award plaintiff replacement cost value exceeding the amount plaintiff could establish it spent through receipts reflected the appraiser's method of determining loss rather than a matter of coverage. *Kwaiser, supra* at 488.[1] The insurance agreement provided the appraisal award was a binding determination of the value of the loss. Once the appraisal panel had determined the value of the loss, defendant lost the right to redetermine the value of loss based on proof of actual costs. There was no genuine issue as to any material fact, and plaintiff was entitled to judgment as a matter of law. MCR 2.116(C)(10); *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Accordingly, the trial court properly granted summary disposition in favor of plaintiff.

Defendant also challenges the award of penalty interest to plaintiff based on MCL 500.2006. MCL 500.2006 provides that an insurer who fails to timely pay an insured for loss

[1] Moreover, defendant was free to argue to the appraisers that the amount of loss submitted by plaintiff was not subject to recovery because it was not verified through receipts or was based on duplication of receipts. This presents submission of factual possibilities, not legal conclusions regarding coverage. *Union Lake, supra*.

engages in an unfair trade practice, and the amount owed is subject to twelve percent interest per annum beginning sixty days after satisfactory proof of loss was received by the insurer, unless the claim was reasonably in dispute. The purpose of the statute "is to penalize insurers for dilatory practices in settling meritorious claims . . .." *Arco Industries Corp v American Motorists Ins Co* (*On Second Remand, On Reh)*, 233 Mich App 143, 148; 594 NW2d 74 (1998). Under the circumstances of this case, we cannot conclude that the trial court erred in imposing the penalty. Despite the fact that disputes regarding coverage are to be submitted to the court before any appraisal occurs, *Kwaiser, supra*, there is no indication that defendant raised the issue of coverage prior to appraisal. In fact, defendant waited until after the binding appraisal was rendered then conducted its own "audit" to justify reduction of the amount of the appraisal award. However, the calculation of interest is based on receipt of "satisfactory proof of loss." There is no indication in the record that the parties submitted evidence to substantiate the date of satisfactory proof of loss, but merely submitted argument to the trial court. See MCR 2.116(G)(4). Accordingly, we remand this matter to the trial court for calculation of interest based on the date of submission of satisfactory proof of loss.

Affirmed and remanded for calculation of penalty interest. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Patrick M. Meter
/s/ Bill Schuette